# STATE OF MICHIGAN

# COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RALPH BRADFORD STOWE,

Defendant-Appellant.

UNPUBLISHED
February 22, 2000

No. 209426
Emmet Circuit Court
LC No. 96-108607-FH

Before: Markey, P.J., and Murphy and R. B. Burns*, JJ.

PER CURIAM.

Defendant Ralph Bradford Stowe appeals his jury convictions of two counts of resisting and obstructing a police officer, MCL 750.479; MSA 28.747. The trial court sentenced defendant as an habitual offender, third offense, MCL 769.11; MSA 289.1083, to a thirty-six-month term of probation, the first twelve months to be served by concurrent terms of incarceration for each of the two resisting convictions. Defendant appeals as of right. We affirm.

I

Defendant first argues that there was insufficient evidence presented at trial to support his conviction for resisting arrest. We disagree.

When determining whether sufficient evidence has been presented to sustain a conviction, we must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proved beyond a reasonable doubt. *People v Godbold*, 230 Mich App 508, 522; 585 NW2d 13 (1998).

Here, defendant argues that there was insufficient evidence to prove beyond a reasonable doubt that he knew that the officers were attempting to make an arrest, and that he intended to resist them in that effort. Knowledge that the officers were making an arrest and intent to resist the officers are elements of the crime of resisting arrest. *People v Julkowski*, 124 Mich App 379, 383; 335 NW2d

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

47 (1983). Defendant argues that in light of the fact that the arresting officers never verbally informed him that he was being arrested, and considering defendant's advanced state of intoxication at the time of the arrest, it cannot be said that defendant possessed the requisite knowledge or intent to sustain his conviction.

Initially, it should be noted that no decisions hold that to sustain a finding that an arrestee possessed knowledge of the arrest, the arresting officer must have explicitly informed that individual that he is in fact being arrested. To the contrary, it is recognized jurisprudence in this state that circumstantial evidence and the reasonable inferences arising therefrom may be sufficient to prove the elements of a crime, even those concerning state of mind. See, e.g., *People v Acosta*, 153 Mich App 504, 512-513; 396 NW2d 463 (1986); *People v Royal*, 62 Mich App 756, 761; 233 NW2d 860 (1975). Moreover, because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient to establish the requisite knowledge. *People v Bowers*, 136 Mich App 284, 297; 356 NW2d 618 (1984). In this case, viewing the evidence in a light most favorable to the prosecution, there was sufficient circumstantial evidence to allow the jury to infer that defendant had knowledge that he was being arrested and that he intended to resist such arrest.

As a threshold argument defendant contends that in assessing the sufficiency of the evidence establishing his knowledge of arrest and intent to resist, this Court must view defendant's perception of the officers' actions in light of his intoxication. However, the offense of resisting and obstructing a police officer is a general, not a specific intent crime, and thus voluntary intoxication is not defense. See *People v Gleisner*, 115 Mich App 196, 200; 320 NW2d 340 (1982). That being said, we turn to the evidence supporting defendant's conviction.

At trial, it was undisputed that defendant left his house and advanced on two officers while carrying the remains of a broken coat rack, which he waved about in a menacing fashion while shouting at the officers to leave. This fact was testified to by each of the officers who were on the scene that evening, as well as defendant's friend who was also present during the incident. Defendant does not contend on appeal that he was unaware that the individuals upon whom he advanced were in fact police officers. According to the officers, as a result of their fear that defendant would strike them with the broken coat rack, defendant was sprayed with a chemical irritant at which point he turned and fled toward the house. The officers followed defendant and apprehended him just outside his front door, at which point defendant physically struggled with the officers as they attempted to place him in handcuffs. From this evidence, the jury could have reasonably inferred that defendant knew of his impending arrest for attempted assault on the officers and that he took purposeful measures to resist that arrest, including attempting to flee into his home and struggling with the officers once he had been apprehended.

Defendant argues, however, that even were we to find the evidence sufficient to justify a rational trier of fact in determining that defendant was in fact cognizant of his arrest, the evidence offered at trial suggests that his struggle with the officers was not an attempt to resist such arrest, but rather a reaction to difficulties in breathing suffered by him as a result of being sprayed with the chemical irritant. While testimony cited by defendant may support an inference that defendant was struggling, not to resist his arrest, but rather to alleviate his breathing difficulties, the determination of defendant's intent in struggling with the officers was a question of fact to be decided by the jury. When addressing an issue concerning

the sufficiency of evidence, this Court will not interfere with the jury's role of determining the weight of evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended on other grounds 441 Mich 1201 (1992). Moreover, as our Supreme Court observed in *People v Konrad*, 449 Mich 263, 273, n 6; 536 NW2d 517 (1995), "[e]ven in a case relying on circumstantial evidence, the prosecution need not negate every reasonable theory consistent with defendant's innocence, but merely introduce evidence sufficient to convince a reasonable jury in the face of whatever contradictory evidence the defendant may provide."

Viewing the evidence in the light most favorable to the prosecution, and not invading the province of the jury, we find that there was sufficient evidence to justify a rational trier of fact in finding guilt beyond a reasonable doubt.

II

Defendant next argues that the trial court erred in denying his motion for a new trial after it was established that certain members of the jury were exposed to extraneous information during deliberations. Again, we disagree.

Shortly before sentencing in this matter, defendant filed a motion to adjourn sentencing together with a motion for new trial. These motions were supported by affidavits from three jurors who had served at defendant's trial. The affidavits included allegations of juror misconduct during deliberations, stating:

> During our deliberations a juror from the [group seeking to convict defendant on all counts], . . . , informed us that she could not consider our position or the defense because she had known Robert Blomberg, a complaining witness, prior to the trial and, because of that prior relationship, could not believe that he was lying or mistaken regarding his testimony.

Officer Blomberg, who testified for the prosecution in this matter, was one of the arresting officers whom defendant had been charged with assaulting and resisting. On the basis of the allegations contained in the affidavits, the trial court adjourned sentencing and conducted a series of evidentiary hearings wherein each of the twelve jurors who served at defendant's trial, as well as Blomberg himself, were questioned regarding the allegations. At the conclusion of those hearings, the trial court issued an extensive written opinion denying defendant's motion for a new trial.

A trial court's ruling on a motion for new trial is reviewed for abuse of discretion. *People v Mechura*, 205 Mich App 481, 483; 517 NW2d 797 (1994). In conducting such a review, this Court reviews the trial court's findings of fact for clear error, *People v Williams*, 228 Mich App 546, 557; 580 NW2d 438 (1998), while reviewing questions of law de novo, *People v Tracey*, 221 Mich App 321, 323-324; 561 NW2d 133 (1997).

In *People v Budzyn*, 456 Mich 77; 566 NW2d 229 (1997), our Supreme Court held that in order to establish that extrinsic influence presented in jury deliberations was error requiring reversal, the defendant must, as a threshold matter, establish the following:

> First, the defendant must prove that the jury was exposed to extraneous influences. Second, the defendant must establish that these extraneous influences created a real and substantial possibility that they could have affected the jury's verdict. [*Id*. at 88-89, citations and footnote omitted.]

Elaborating on a defendant's burden in establishing the second prong of this test, the Court stated:

> Generally . . . the defendant will demonstrate that the extraneous influence is substantially related to a material aspect of the case and that there is a direct connection between the extrinsic material and the adverse verdict. If the defendant establishes this initial burden, the burden shifts to the people to demonstrate that the error was harmless beyond a reasonable doubt. [*Id*. at 89, citations and footnote omitted.]

The trial court's opinion demonstrates that it appropriately applied the *Budzyn* test. Ultimately, the court determined that although defendant had established that certain extraneous information had been injected into deliberations, the evidence adduced at the hearings did not support a finding that this information affected the jury's verdict, and thus defendant was not entitled to a new trial. Defendant contends that the trial court erred in concluding that extrinsic information did not affect the verdict. We do not agree.

In *Budzyn*, in finding a "real and substantial possibility" that external influences could have affected the verdict, the Court appeared to be strongly influenced by the fact that the extrinsic information was actually discussed by the jury. *Id*. at 97-99. In this case, in contrast, the greater part of the testimony produced at the several hearings indicates that there was no discussion of the extraneous information and that a majority of the jurors were never even exposed to the information. After review of the testimony, we conclude that there was neither clear error in the trial court's findings of fact, *Williams, supra* at 557, nor error in the court's legal reasoning. *Tracey, supra* at 323-324. Accordingly, we adopt the well reasoned analysis of the trial court's opinion.

We hold that the trial court did not abuse its discretion in finding no direct connection between the adverse verdict and the extrinsic information. *Budzyn, supra* at 89; *Mechura, supra* at 483.

Affirmed.

/s/ Jane E. Markey
/s/ William B. Murphy
/s/ Robert B. Burns